

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alamanda Gribbin	Team: Team # 4	CCRB Case #: 200306718	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/16/2003 10:30 PM	Location of Incident: Glenwood Road & East 84th Street, Brooklyn		Precinct: 69	18 Mo. SOL 2/16/2005	EO SOL 2/16/2005
Date/Time CV Reported Mon, 08/18/2003 6:45 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Tue, 09/02/2003 4:33 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Cesar Dorado	25149	922279	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Anthony Cutaia	02031	928143	69 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Cesar Dorado	Force: PO Cesar Dorado used physical force against § 87(2)(b)	
B.POM Cesar Dorado	Off. Language: PO Cesar Dorado made remarks to § 87(2)(b) based upon ethnicity.	

Synopsis

On August 16, 2003, § 87(2)(b) and his wife § 87(2)(b) had a domestic altercation in their home located at 8322 Glenwood Road in Brooklyn. During the altercation, § 87(2)(b) ran out of the house. As § 87(2)(b) was walking down E. 83rd Street, the residents of § 87(2)(b) saw her physical condition and called 911. PO Cesar Dorado and PO Anthony Cutaia of the 69th Precinct responded to the call. While speaking to § 87(2)(b) PO Dorado and PO Cutaia witnessed § 87(2)(b) walking down the street. PO Dorado and PO Cutaia apprehended § 87(2)(b) near the corner of E. 84th Street and Glenwood. According to § 87(2)(b) while PO Dorado and PO Cutaia were placing him into handcuffs, PO Dorado inserted his knee into § 87(2)(b)'s lower back (allegation A). Also while placing § 87(2)(b) into handcuffs, PO Dorado commented "I got you nigger" (allegation B). § 87(2)(b) was placed under arrest for § 87(2)(b). § 87(2)(b) subsequently dropped all of the charges against § 87(2)(b).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) made his initial complaint, in person, at the 69th Precinct station house on August 18, 2003. In that complaint, § 87(2)(b) stated that on August 16, 2003, at approximately 10:30pm, he was walking near his home located at § 87(2)(b) in Brooklyn when he noticed three police cars approaching him. One of the patrol cars stopped and an officer exited. This officer ordered § 87(2)(b) to stop and put his hands behind his back. This officer placed § 87(2)(b) into handcuffs and then pushed him into a fence that was in front of him. As § 87(2)(b) was regaining his balance from having been pushed forward, he felt what he believed to be the officer's knee in his lower back. At this time, § 87(2)(b) also heard this officer comment, "I got you nigger" (see enclosure # 3a).

CCRB Statement:

§ 87(2)(b) was interviewed at the CCRB on Monday, September 15, 2003. § 87(2)(b)'s CCRB statement was similar to that attested to in the complaint he filed at the 69th Precinct. However, § 87(2)(b)'s CCRB statement did contain details not mentioned in the precinct complaint report. During his CCRB interview, § 87(2)(b) stated that on the date of incident, he and his wife § 87(2)(b) had an argument during which he "slapped" her. Approximately five minutes later, § 87(2)(b) told her husband she was going to the house of her sister in law. Approximately ten minutes later, § 87(2)(b) walked out the back of his house and began to walk down the sidewalk of § 87(2)(b). According to § 87(2)(b) he was just walking up and down the sidewalk "cooling off." After he had been walking for about two to three minutes, four or five marked patrol cars approached § 87(2)(b). One officer, PO Cesar Dorado of the 69th Precinct, told § 87(2)(b) to stop and put his hands behind his back. PO Dorado and his partner, PO Anthony Cutaia of the 69th Precinct, then approached § 87(2)(b) and placed handcuffs on him. PO Dorado then pushed § 87(2)(b) into a nearby fence. At the time, § 87(2)(b) was standing approximately two feet from the fence. PO Dorado pushed him with his hands. After pushing him, PO Dorado put his knee in § 87(2)(b)'s back and said, "I got you nigger." Because he was facing the fence, § 87(2)(b) did not actually see PO Dorado place his knee in his back, but it "felt like a knee." In response to the comment by PO Dorado § 87(2)(b) said, § 87(2)(b) did you hear what he just said to me?" According to § 87(2)(b) his wife § 87(2)(b) was standing about four to five feet away when this occurred.

§ 87(2)(b) was then transported to the 69th Precinct station house. § 87(2)(b) alleges that when he complained to the desk officer, Sgt. Dawn Lyons, that he had been injured, Sgt. Lyons took a picture of § 87(2)(b)'s face. § 87(2)(b) then told Sgt. Lyons that it was his back that was injured, not his face. § 87(2)(b) stated that he was subsequently offered medical attention but declined because he was afraid of what would happen to him on the way. § 87(2)(b) was then processed for arrest.

§ 87(2)(b) stated that when PO Dorado and PO Cutaia were talking to his wife, she told them about things that had happened in the past and that these are the actions they charged him with. § 87(2)(b) stated that his wife was not injured and subsequently dropped the domestic abuse charges against him. § 87(2)(b) also stated that the knee in his back re injured a herniated disk. § 87(2)(b) recalled that he immediately experienced a sharp pain up his back and then a pain shooting down his leg. § 87(2)(b) alleged that he was still experiencing the pain at the time of his CCRB interview and was taking three Motrin a day to manage it (see enclosure #5a-5d).

Results of Investigation

Witness testimony:

§ 87(2)(b) was interviewed at the CCRB on Thursday, October 2, 2003. § 87(2)(b) stated that on August 16, 2003, at approximately 10:30pm, she had an argument with her husband. § 87(2)(b) inside her home. (§ 87(2)(b) was reluctant to divulge details of the altercation she had with her husband, and preferred to begin her narrative at the point where police were called to assist.) According to § 87(2)(b) she ran into some strangers on the street that saw the bruises on her face and called the police. PO Dorado and PO Cutaia responded to 83rd Street and Glenwood Road and spoke to § 87(2)(b) about what had happened. § 87(2)(b) told the officers that her husband had hit her and she had run out of the house. While she was sitting in the back of the RMP talking to PO Dorado and PO Cutaia, § 87(2)(b) saw her husband § 87(2)(b) walking down the street and pointed him out. PO Dorado and PO Cutaia told § 87(2)(b) to stay in the car and they exited the RMP. § 87(2)(b) got out of the RMP anyway and sat down on the sidewalk. According to § 87(2)(b) at this time, she was crying pretty heavily and did not have an exact recollection of what took place. § 87(2)(b) saw her husband put his hands up and say that he had not done anything. When asked whether or not she observed PO Dorado or PO Cutaia push her husband against a fence, § 87(2)(b) was very reluctant to answer the question. Eventually, § 87(2)(b) stated that she could not be certain whether or not she saw PO Dorado and PO Cutaia push her husband up against the nearby fence, but she did see her husband leaning against the fence with the officers standing behind him. PO Dorado, the officer who operated the RMP, was standing closer to her husband. § 87(2)(b) did recall hearing her husband say something about how he was not resisting arrest so why were the officers hurting him, but she did not see anything. § 87(2)(b) then saw her husband led to an RMP. § 87(2)(b) stated that she did not hear any officers refer to her husband as a nigger. § 87(2)(b) later dropped the charges against her husband (see enclosure #6a-6d).

SPRINT Print-out:

The SPRINT print-out associated with this complaint indicates that at 10:13pm, Vonzel Smith of § 87(2)(b) contacted 911 to report that a male had assaulted a female and that the female had injuries to her face. At 10:26pm, EMS responded to the location. At 10:49pm, sector 69C, PO Dorado and PO Cutaia, reported that one person was under arrest from that location (see enclosure #12a-12c).

Aided Report:

On August 17, 2003, an Aided Report was filed with respect to § 87(2)(b). According to the report, § 87(2)(b) sustained bruises to her face and head. The report also indicates that § 87(2)(b) refused medical attention (see enclosure #13a-13d).

UF-61:

On August 16, 2003, PO Cutaia filed a Domestic Incident Report concerning the assault of § 87(2)(b) by her husband § 87(2)(b). According to that report, § 87(2)(b) stated that during this incident, her husband beat her about the face with his fists and hit her on the head with a bottle, causing bruising and substantial pain. The report also indicates that § 87(2)(b) refused medical attention but an Aided Report was prepared. § 87(2)(b) signed the report and indicated that she agreed with all of the information contained there within (see enclosure #17a-17b).

Arrest related information:

The 69th Precinct command log indicates that PO Dorado was the officer credited with § 87(2)(b)'s arrest. The entry also indicates that § 87(2)(b) was intoxicated at the time he was brought to the 69th Precinct station house (see enclosure #15a).

A request was made through IAB for the photograph taken of § 87(2)(b) at the time he was processed for arrest. The request was returned stating that no negative could be found in the file. However, during his CCRB interview, PO Dorado supplied a photograph of § 87(2)(b) taken by Sgt. Lyons at the time he was presented in front of the desk. There is no indication in this photograph that § 87(2)(b) is suffered any injuries (see enclosure #18a).

According to the Booking Arraignment Disposition System database, BADS, on August 16, 2003, § 87(2)(b) was charged with § 87(2)(a) 160.50 (see enclosure #16a).

Medical Records:

During his CCRB interview, § 87(2)(b) provided the name and address of the physician, § 87(2)(b) who has treated him for a herniated disk in his back. The records received from § 87(2)(b) did confirm that in 1992 § 87(2)(b) sought medical treatment for a herniated disk in his back. The records also indicated that § 87(2)(b) again sought treatment for this condition in 2001, but there was no indication that he had sought any treatment for his back injury since 2001 (see enclosure #11a-11QQ).

Officer testimony:

PO Cesar Dorado was interviewed at the CCRB on January 22, 2004. PO Cesar Dorado recalled that on August 16, 2003, he worked a 3:00pm by 11:35pm tour. PO Dorado and his partner, PO Cutaia, were assigned to patrol sector C. Both officers were dressed in uniform and assigned to RMP # 1592. PO Dorado was the operator.

Memo book entry (see enclosure #7a-7c):

2228: assigned an assault in progress at § 87(2)(b)
2249: § 87(2)(b) under arrest and transported to the station house
2257: arrived at the station house

Officer statement:

On August 16, 2003, PO Dorado and PO Cutaia responded to a radio call of an assault in progress at § 87(2)(b). When PO Dorado and PO Cutaia arrived at this location, a barefoot § 87(2)(b) approached them. § 87(2)(b) told PO Dorado and PO Cutaia that her husband § 87(2)(b) had been drinking and they got into an argument. § 87(2)(b) stated that her husband had punched her in the face and broke a bottle over her head. § 87(2)(b) would not tell PO Dorado and PO Cutaia where they could find her husband or where she lived. PO Dorado requested that an ambulance respond to their location. The paramedics inspected § 87(2)(b) but she refused medical treatment. PO Dorado and PO Cutaia then began to take a report from § 87(2)(b). As the officers were taking the report, § 87(2)(b) saw her husband walking down the street and pointed him out. When § 87(2)(b) noticed PO Dorado and PO Cutaia, he turned around and started walking the other way. PO Dorado and PO Cutaia, with § 87(2)(b) in the back of the RMP, intercepted § 87(2)(b) at the corner of Glenwood Road and E. 83rd Street. PO Dorado recalled that § 87(2)(b) was "obviously intoxicated," smelled strongly of alcohol, and was slurring his speech. PO Dorado and PO Cutaia told § 87(2)(b) he was going to be placed under arrest. PO Dorado and PO Cutaia then turned § 87(2)(b) around to place the handcuffs on him. While this was taking place, § 87(2)(b) kept trying to turn around and talk to the officers. PO Dorado and PO Cutaia then grabbed § 87(2)(b) by the shoulders and held him against a wooden fence so they could get the handcuffs on him. Once against the fence, § 87(2)(b) continued to

try and turn around. PO Dorado recalled that he had his hand on § 87(2)(b)'s left shoulder and PO Cutaia had his hand on the right shoulder. PO Dorado denied that either he or his partner put a knee in § 87(2)(b)'s back.

As PO Dorado and PO Cutaia were walking § 87(2)(b) to their RMP, § 87(2)(b) saw his wife § 87(2)(b) standing on the sidewalk. § 87(2)(b) did start talking to § 87(2)(b) but he was incoherent and PO Dorado could not make out what he was trying to say. PO Dorado denied that any officers ever referred to § 87(2)(b) as a nigger. PO Dorado and PO Cutaia transported § 87(2)(b) to the station house. During the transport, § 87(2)(b) was ranting incoherently, but he was not complaining of any injuries, nor did he appear to be suffering from any injuries. While § 87(2)(b) was lodged in a cell, PO Dorado went to speak with him to get information for the arrest processing. At this time, § 87(2)(b) told PO Dorado that he wanted to make a complaint against his "arresting officer." § 87(2)(b) stated that this officer had called him a nigger, smashed his head into a pole and had purposefully tightened his handcuffs. PO Dorado asked § 87(2)(b) to state again which officer had done this to him. § 87(2)(b) replied his arresting officer. PO Dorado then told § 87(2)(b) that he was the arresting officer to which § 87(2)(b) replied, "yes, you were the one." PO Dorado commented that at this time, § 87(2)(b) was not exhibiting any symptoms to suggest he was in pain (see enclosure # 8a-8b).

PO Anthony Cutaia was interviewed at the CCRB on January 22, 2004. § 87(2)(g)

According to PO Cutaia, when § 87(2)(b) was brought before the 69th Precinct station house desk, he began complaining to Sgt. Lyons that his arresting officer had called him a "nigger" and had smashed his head into a pole. § 87(2)(b) also alleged that the officers had tightened up his handcuffs and were beating on him. In fact, § 87(2)(b) began squealing and saying that the officers were currently tightening his handcuffs when in fact PO Dorado and PO Cutaia were standing several inches behind him and not making physical contact. In response to the complaint by § 87(2)(b) that the officers had smashed his head into pole, Sgt. Lyons visually inspected § 87(2)(b) finding no injuries, and took a picture of his face (see enclosure #18a). There were no injuries visible in this photograph. PO Cutaia also recalled that § 87(2)(b)'s son later came to the 69th Precinct station house and told him that his father had a problem with alcohol. PO Cutaia denied that either he or PO Dorado ever smashed § 87(2)(b)'s face into a pole, referred to him as a "nigger" or purposefully tightened his handcuffs beyond what was necessary (see enclosure #10a-10c).

Conclusions and Recommendations

Undisputed facts:

On August 16, 2003, § 87(2)(b) had an argument with his wife § 87(2)(b). At one point during the argument, § 87(2)(b) ran out of her house. While § 87(2)(b) was running from her residence, she encountered a random citizen on the sidewalk who was concerned about her injuries and called 911. PO Anthony Cutaia and PO Cesar Dorado of the 69th Precinct responded to the call. While interviewing § 87(2)(b), PO Cutaia and PO Dorado saw § 87(2)(b) walking down the street. PO Dorado and PO Cutaia intercepted § 87(2)(b) at the corner of 83rd Street and Glenwood Road. PO Dorado and PO Cutaia then placed § 87(2)(b) under arrest for assault. § 87(2)(b) subsequently dropped the charges against her husband.

Disputed facts:

§ 87(2)(g)

Credibility assessment:

§ 87(2)(g)

During his CCRB interview, § 87(2)(b) stated that during his verbal altercation with his wife, he "slapped" her. When questioned concerning information

indicating he had assaulted his wife, § 87(2)(b) let out an audible laugh and stated that his wife had told the officers about past incidents between the two of them and that the officers had charged him based upon those details (see enclosure #5a-5d). In addition, when making his initial complaint at the 69th Precinct station house, § 87(2)(b) completely omitted the details of his altercation with his wife. Instead, § 87(2)(b) suggested that he was “out for a walk” in his neighborhood when he was approached by PO Dorado and PO Cutaia. § 87(2)(g)

§ 87(2)(b) In addition, at no time did § 87(2)(b) indicate that he had been drinking during this incident, while the testimonies of PO Dorado and PO Cutaia, and the information in the 69th Precinct command log, clearly indicate that he was intoxicated. There is also the testimony of PO Cutaia indicating that § 87(2)(b) was making up allegations against them while he was in front of the desk and the testimony of PO Dorado that § 87(2)(b) stated to him that he wanted to make a complaint against his “arresting officer.” According to PO Dorado, § 87(2)(b) did not seem to know that he was the arresting officer until PO Dorado identified himself as such. § 87(2)(g)

Officer identification:

During their respective CCRB interviews, neither § 87(2)(b) nor § 87(2)(b) could offer anything other than a brief physical description of the two officers that were involved in placing § 87(2)(b) under arrest. However, § 87(2)(b) did state that the officer who appeared to be standing closer to her husband was the operator of the RMP. In addition, PO Dorado recalled that when he questioned § 87(2)(b) at the 69th Precinct station house, § 87(2)(b) indicated that he wanted to make a complaint against his “arresting officer.” When PO Dorado indicated to § 87(2)(b) that he was the arresting officer, § 87(2)(b) responded that yes, he wanted to make the complaint against PO Dorado. The BADS print-out associated with the arrest of § 87(2)(b) identified PO Dorado as the arresting officer (see enclosure #16a). The 69th Precinct command log identified PO Dorado as the arresting officer (see enclosure #15a). Finally, PO Dorado’s memo book for August 16, 2003 indicted that he was the operator of the RMP. § 87(2)(g)

Allegation A: Force: PO Cesar Dorado used physical force against § 87(2)(b) in violation of Patrol Guide Procedure 203-11.

§ 87(2)(b) alleges that while being taken into custody, PO Dorado pushed him into a fence and then inserted his knee into § 87(2)(b)’s lower back, causing the re aggravation of a herniated disk (see enclosure #5a-5d). Both PO Dorado and PO Cutaia denied that § 87(2)(b) was ever pushed against a fence or that a knee was ever placed against § 87(2)(b)’s back. However, PO Dorado and PO Cutaia did recall that it was necessary to hold § 87(2)(b) up against a fence by placing one hand each on his shoulders. PO Dorado and PO Cutaia testified respectively that it was necessary to hold § 87(2)(b) against the fence because he was intoxicated and making it difficult to put handcuffs on him (see enclosure #8a-8b and #10a-10c). § 87(2)(g)

§ 87(2)(b) was at first very reluctant to answer the question and then stated that she did not see this take place (see enclosure #6a-6d). In addition, there is no indication in the medical records pertaining to § 87(2)(b)’s back condition that he ever sought any treatment for this “re aggravation” (see enclosure # 11a-11QQ).

§ 87(2)(g)

§ 87(2)(g) [REDACTED]

Allegation B: Offensive language: PO Cesar Dorado made remarks to § 87(2)(b) based upon race, in violation of Patrol Guide Procedure 203-10.

According to § 87(2)(b) while PO Dorado and PO Cutaia were placing him into handcuffs, PO Dorado stated, “we got you nigger” (see enclosure #5a-5d). Both PO Dorado and PO Cutaia denied that PO Dorado said this statement or anything similar to § 87(2)(b). In addition, despite the fact that § 87(2)(b) was positive that his wife § 87(2)(b) would have heard PO Dorado make this statement, § 87(2)(b) testified that she did not (see enclosure #6a-6d). § 87(2)(g) [REDACTED]

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: